

# EXHIBIT 8

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UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

	X	
CYCLE-CRAFT CO., INC.,	X	
d/b/a BOSTON	X	
HARLEY-DAVIDSON/BUELL,	X	
Plaintiff	X	
	X	CASE NO.
vs.	X	04 11402 NMG
	X	
HARLEY-DAVIDSON MOTOR	X	
COMPANY, INC., and BUELL	X	
DISTRIBUTION COMPANY, LLC,	X	
Defendants	X	

*DEPOSITION of RONALD S. BUCHBAUM*, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on June 2, 2005, commencing at 9:10 a.m.

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1           someone else?

2       A.     Repeat the question?

3       Q.     Yes. Was that something that you delegated  
4           to someone else?

5       A.     Was what something?

6       Q.     Learning about Harley-Davidson policies with  
7           respect to customers to whom dealerships  
8           could sell or could not sell?

9                   MR. REHNQUIST: I object to the  
10           form.

11      A.     We sold bikes to anybody.

12      Q.     Were you aware of a policy of  
13           Harley-Davidson called a "Non-Retail Sales  
14           Policy"?

15      A.     No, sir.

16                   MR. REHNQUIST: I object to the  
17           form.

18      Q.     During your time as general manager at  
19           Motown that was not something that you ever  
20           heard about?

21                   MR. REHNQUIST: I object to the  
22           form.

23      A.     That's correct. I didn't hear about it.

24      Q.     Did you hear about any other Harley-Davidson

1           to pay the amount of the deposit -- excuse  
2           me, agreeing to pay the amount of the  
3           motorcycle less the deposit.

4       Q.   All right. Now, I want to ask you the same  
5           question, but let's suppose that I'm an  
6           employee of the dealership, how is the  
7           process different?

8       A.   With an employee, it depends. Usually an  
9           employee wouldn't have to pay or wouldn't  
10          have to write up an order until the bike  
11          came in, and I'd let an employee order a  
12          bike without any paperwork, which I have  
13          done in the past.

14      Q.   What if the bike is there?

15      A.   When the employee is ready to take the bike  
16          home, we'd sit down and the employee would  
17          pay for the bike before it left the facility  
18          with the employee.

19      Q.   What if the employee wants to hold the bike?

20      A.   We'd just hold the bike for the employee.

21      Q.   Okay. And you wouldn't do any -- there  
22          wouldn't be any paperwork for that to show  
23          that it's being held?

24      A.   We might put a tag on it "hold for Ron" or

1       A.     No, no, but personally, I feel that, yeah,  
2             they put a lot of pressure on the dealers,  
3             because they ship bikes in July for the  
4             dealer to sell in July, and some of them  
5             even come in as late as mid-July or end of  
6             July, and you gotta really hustle and sell  
7             them so you don't get penalized the  
8             foregoing year.

9       Q.     You say in the last sentence of that  
10            paragraph "That as a result, there was a  
11            risk to Cycle-Craft of a reduction in its  
12            2004 allocation"; do you see that?

13      A.     Yes, sir.

14      Q.     And was that something that was of serious  
15            concern to you at the time?

16                   MR. REHNQUIST: I object to the  
17            form.

18      A.     Yes.

19      Q.     The next paragraph you indicate that you  
20            extended an offer to employees to buy bikes  
21            at \$500 over dealer invoice; do you see  
22            that?

23      A.     Yes.

24      Q.     Is that something that you had ever done

1 before?

2 A. Yes.

3 Q. And at the Boston dealership?

4 A. I've sold bikes at the Boston dealership for  
5 \$500 over before.

6 Q. Before July of '03?

7 A. Yes.

8 Q. You go on to say --

9 A. I think I did.

10 Q. Was this offer made to all employees and  
11 relatives of employees?

12 A. I don't remember. It was made to a lot of  
13 people.

14 Q. How did you publicize it?

15 A. Word-of-mouth around the dealership.

16 Q. Anything in writing?

17 A. I don't know. I don't believe so. Maybe, I  
18 don't know.

19 Q. Was this deal something better than  
20 employees could traditionally get prior to  
21 the end of the model year? Was this  
22 something new?

23 A. Some yes, and some no.

24 As I think I testified to earlier, I

1           would make different deals with different  
2           people. It wasn't -- it was just what we  
3           had it do at the time. There was no --

4       Q.   Did you offer different deals to different  
5           employees?

6       A.   Some people paid \$500 over at times. Some  
7           people paid a thousand over. Some paid  
8           cost. When I had to get models out,  
9           sometimes I would even sell it below cost.

10      Q.   Was it based on what you could get for the  
11           bike or some seniority level for the  
12           employee?

13      A.   It had nothing to do with seniority or  
14           liking a person or not liking a person. It  
15           had to do with the motorcycle. Did I want  
16           to get rid of this motorcycle.

17                   For example, there's V-rods that I  
18           would have gave to them below cost and I  
19           offered lots of employees V-rods below cost.  
20           I just wanted to get rid of the bikes.

21      Q.   You say in Paragraph 5 that two employees  
22           took you up on that offer of \$500 over  
23           invoice, Mr. Giordano and Mr. Potts, in  
24           Paragraph 5?

1 A. Yes.

2 MR. REHNQUIST: Did you want to  
3 finish your last answer?

4 THE WITNESS: No, that's okay.

5 Q. You say Mr. Giordano bought a motorcycle on  
6 July 3, so was this offer extended sometime  
7 prior to July 3?

8 A. Yeah. These fellas bought it before that.  
9 We started wanting to get rid of bikes  
10 sometime in June, July when all those  
11 bikes came in. So, yeah, these fellas were  
12 some of the first to take advantage of \$500  
13 over.

14 Q. I thought your testimony was, though, that  
15 the Vegas show was in July?

16 A. It was.

17 Q. And you started this offer after the Vegas  
18 show when you got the bikes released?

19 A. After or before. These could've been --  
20 these could've been bikes that were already  
21 in the house and not from released at the  
22 Vegas show.

23 These two bikes could've already  
24 been there, I don't know, because these



1 personal knowledge, but go ahead.

2 A. Mr. Fred Giordano was buying this bike, as  
3 told to me, by his brother Joe Giordano,  
4 that he was doing some type of raffle for a  
5 fundraiser in Michigan.

6 They have a ride every year in  
7 Michigan -- Toys for Tots, and he sponsors  
8 this ride and it was being raffled off or  
9 given away or something to do with the  
10 Marine Corps because the Marine Corps  
11 collects gifts for this Toy for Tots ride,  
12 so he was buying a bike for the  
13 Toys for Tots to be given away or raffled  
14 away or whatever away at this function.

15 We delivered the bike to Mr. Fred  
16 Giordano in Michigan from Boston  
17 Harley-Davidson.

18 In fact, his brother, Joe Giordano,  
19 got a carrier to take that bike from our  
20 facility to deliver it to Fred Giordano.  
21 That, I remember.

22 Q. Okay. So, Fred Giordano did not come to the  
23 dealership?

24 A. No.

1 A. Yes.

2 Q. You're willing to sacrifice the profit on  
3 those bikes to get them out before the end  
4 of the model year?

5 A. That is correct.

6 Q. About how long before the end of the model  
7 year do you make that second offer to  
8 employees and relatives of employees?

9 A. I don't remember, but it would be the  
10 wishing hours or the wishing days, five,  
11 four, three days prior to the end as I've  
12 seen done in the past and as we did in the  
13 past.

14 Q. So, sometime in the last week of July?

15 A. Yes.

16 Q. And how do you communicate that offer to the  
17 dealership?

18 A. Again, word-of-mouth. Bunch of people  
19 sitting in a room, Hey, we have -- this is  
20 exactly how it went, "Hey, we have these  
21 bikes. We need to sell them. We are  
22 selling them at cost or V-rods you can have  
23 \$1,000 below cost."

24 we would do things like that to move

1 the motorcycle.

2 Remember, when you're moving the  
3 motorcycle, you're saving your floor plan  
4 charges and you're getting rid of old  
5 inventory that's going to be replaced by new  
6 inventory shortly, and the new inventory is  
7 going to bring the cost of the old inventory  
8 down.

9 Q. Did you discuss this offer with Mr. Atwood?

10 A. No, I don't think so. I might have.

11 Q. How about the previous one at \$500 over  
12 invoice?

13 A. We talk all the time. I don't know if we  
14 specifically mentioned that or not.

15 Q. At this point in time, say, the summer of  
16 '03, how often were you talking to  
17 Mr. Atwood on business?

18 A. Mr. Atwood -- I would talk to him as much as  
19 possible. He had -- he was going through a  
20 bad time with health problems and family  
21 health, that restricted him from me seeing  
22 him often.

23 We would communicate on the phone a  
24 lot during the day. If I was busy during

1 Q. Roderick Granese?

2 A. I don't know who he is.

3 Q. Okay. How long was the offer to buy bikes  
4 at cost good for, just 'til the end of the  
5 model year?

6 A. 'Til midnight.

7 Q. On July 31st?

8 A. There you go.

9 Q. And these -- you say that these 13 employees  
10 or employee relatives initially ordered  
11 motorcycles; how did they do that?

12 MR. REHNQUIST: I'm sorry, where  
13 are you?

14 Q. This is Paragraph 6 of your declaration.  
15 How did they order them?

16 A. I don't know. I believe that the way it  
17 went with these bikes was that we had -- we  
18 were all in a room and I was in the room  
19 with these fellas, and we said, Hey, we have  
20 X amount of bikes we would like to obviously  
21 get rid of before the end of the model year,  
22 you guys could purchase them at either cost,  
23 and hopefully, we could put them aside for  
24 you, and hopefully we'll sell them before

1           you've got to take them and then you'll  
2           have a choice whether to take them or  
3           we'll go ahead and make an SWR change in  
4           the new customer's name if we were to sell  
5           them.

6           Q.     okay. But they would have to take them by  
7           the end of the model year?

8           A.     They would love to take them because they  
9           would sell them for an extremely high  
10          profit.

11          Q.     But it would have to be in the current model  
12          year, in '03?

13                   MR. REHNQUIST: Objection.

14          A.     No. We would hold these bikes for these  
15          people. In other words, like my bikes,  
16          we -- I was making a commitment to buy them  
17          if we didn't sell them.

18          Q.     If you didn't sell them by when?

19          A.     Well, if we didn't sell them, there was  
20          no time on it. It's just we didn't sell  
21          them.

22          Q.     Well, you had to buy them by the end of the  
23          model year, right?

24          A.     No, we had to commit to them by the end of

1           that here.

2                       We wouldn't -- in other words, I  
3           didn't take this bike. This bike wasn't  
4           taken home by me, my bike and my son's  
5           bike.

6       Q.     Let me put another question.

7                       What -- did you tell anyone that  
8           they had to take a bike?

9       A.     Oh, absolutely not.

10      Q.     Did all of the 13 individuals that we've  
11           identified in Paragraphs 22 and 23 and 24 of  
12           Mr. McPhee's declaration give you  
13           commitments that they would buy new  
14           motorcycles?

15      A.     Absolutely. Everybody that I'm aware of  
16           that was in that room -- now, there were  
17           some people here that weren't in that room  
18           that I don't know.

19      Q.     Okay. Well, who was in the room with you?

20      A.     I believe Joe Giordano -- the people that --  
21           Mike Bloom, myself, Jamie, maybe Sean  
22           Walsh, some other salespeople that worked  
23           there.

24                       These people that didn't work

1           there, they were not in the dealership or  
2           walking around, so I don't know how their  
3           commitments came in.

4       Q.     All right.

5       A.     But I can tell you about the commitments of  
6           the people that worked at the company.

7       Q.     And do you recall at that meeting telling  
8           Jamie to submit SWRs for those 13  
9           individuals?

10      A.     I don't recall it, but that would've been  
11           the normal course to protect Boston Harley  
12           for not losing those bikes the next year.

13      Q.     Okay. Even though --

14      A.     In other words --

15      Q.     -- as of that point in time, they hadn't  
16           been sold?

17                       MR. REHNQUIST: I object to the  
18           form.

19      Q.     Right?

20      A.     They'd been committed to. They said, "Yes,  
21           we want this bike. Ron, we will take this  
22           bike if somebody else doesn't want this  
23           bike. If you're going to let us have it at  
24           cost," in some cases below cost.

1 I remember Jason Marsca is another  
2 fella that worked for us, I remember I  
3 offered him a V-rod at that time and he  
4 was contemplating and then he turned it  
5 down below cost. He said, "No, I don't want  
6 one.

7 Q. Okay. As of that time, the bikes hadn't  
8 been sold yet; ultimately, they were sold to  
9 other people; is that right?

10 MR. REHNQUIST: Object to the form.

11 A. At the time that these people got them?

12 Q. The meeting that you're talking about.

13 A. They were available.

14 Q. But they hadn't been sold?

15 A. No.

16 Q. Okay.

17 A. So, that's why I got two. Mike -- now, in  
18 my case, I got two, Mike Bloom got three or  
19 four, we would -- if we didn't sell these  
20 bikes in a timely fashion to someone else,  
21 I was going to buy these bikes. I  
22 committed to these bikes. That's why we  
23 held them.

24 Q. The dealership submitted SWRs for these



1 bikes according to Harley-Davidson  
2 records?

3 A. They did.

4 Q. And that was done on July 31?

5 A. That's correct.

6 Q. of 2003?

7 A. Correct.

8 Q. And then after that, the bikes were sold to  
9 other individuals?

10 A. Other individuals, correct, and then we  
11 called up or transmitted -- let's say,  
12 Ron Buchbaum had a bike and then  
13 Mr. Berkowitz -- Ron Buchbaum didn't pick up  
14 that bike. We transmitted the SWR, but I  
15 never got it, because I would rather have  
16 a customer pay for it and, you know, pay  
17 more money for it, and you were the  
18 customer, Mr. Berkowitz, he came in and got  
19 it.

20 Q. But at that point it was after the end of  
21 the model year, right?

22 A. Yeah.

23 Q. But you've already reported it sold to  
24 Harley-Davidson?

1 Q. No offense. Nobody wants to hear it, at  
2 least not now.

3 MR. REHNQUIST: It's about an hour.  
4 Bill, do you want to break?

5 MR. BERKOWITZ: Let me finish this  
6 line. It won't take long.

7 Q. The corrections to the SWRs or the  
8 adjustments that were made to SWRs, did you  
9 ask Jamie to make those changes after the  
10 bikes were sold to --

11 A. She would have done that automatically.

12 Q. All right. Mr. McPhee's affidavit, if you  
13 take a look at it, the bottom of  
14 Paragraph 23, it says, "In each case the SWR  
15 was appropriately adjusted to reflect the  
16 second purchaser as the customer"; do you  
17 see that?

18 A. Yes, sir.

19 Q. And, you know, before you had said you  
20 wanted to change your declaration because of  
21 the use of the word "purchaser," in fact,  
22 none of the people in the first column  
23 actually purchased the bikes; is that  
24 correct?

1           wanted to make sure that Sean understood  
2           that they were sold to individuals.

3 Q. why did you want to make sure that he  
4 understood that?

5 A. Because that's what has to be done.

6 | Q. why?

7       A.     You have to sell -- Harley wants you to sell  
8       bikes to individuals.

9 Q. where did you -- when did you learn that?

10 A. well, that's been like that. I didn't learn  
11 it.

12 Q. Is that something you knew from Motown?

13 A. From Motown, from -- we always sold to  
14 individuals.

15 Q. And was it your understanding that that  
16 was a Harley requirement to sell to  
17 individuals?

18 A. Just you had to sell them -- I think -- I  
19 think I learned that maybe in Motown.  
20 Maybe -- yeah, maybe at Motown. But we've  
21 always sold -- I think what prompted it is  
22 because they were out-of-state bikes, they  
23 were bikes from Florida.

24 So, I said, "Make sure you sell one

1 A. About?

2 Q. Your belief that -- that bikes could only be  
3 sold to individuals.

4 A. I think I always knew it was an unwritten  
5 rule that Harley did not want you reselling  
6 these motorcycles to people that were going  
7 resell them.

8 You had to sell it to a person that  
9 was going to ride this bike and we run into  
10 that a lot where people will try to buy them  
11 and we don't sell them two or three bikes.  
12 we sell one bike per person.

13 Q. How do you find out whether the person's  
14 going to resell them?

15 A. Well, you don't find out. You find out if a  
16 person comes in and says, "Hey, I want three  
17 motorcycles."

18 "You can't buy three motorcycles.  
19 What do you want three motorcycles for?"

20 Q. If you find out that they want to buy them  
21 for three customers, do you tell them, well,  
22 those customers have come into the  
23 dealership and we'll deal with them?

24 A. Yeah, I've had a lot of people that have

1           come to me in the past and say, "Hey, we  
2           want to buy three or four bikes," and they  
3           send the customers into the dealership or  
4           deal with it on the phone, and the customer  
5           will show -- you know, sign their own bill  
6           of sale or pay for the bike with their own  
7           check or something like that.

8       Q.     You say you've always known about that?

9       A.     Unwritten rule.

10      Q.     And would that go back to the Motown days?

11      A.     I think it would go back to --

12      Q.     Even Barnett?

13      A.     -- the Barnett days.

14      Q.     Did you tell your salesmen about that rule  
15           at Boston?

16      A.     I think I had a chat with one of my salesmen  
17           at one time. Whether it was before this  
18           incident or after, I don't recollect.

19      Q.     "This incident" being the Florida deal or  
20           something --

21      A.     Yeah. And that's another deal that Jason  
22           Marsca was working on and I had told Marsca  
23           the same thing, "You can't sell multiple  
24           motorcycles to one person. You must sell it

1 to the person that's buying it and using  
2 it."

3 Q. Do you recall Jason coming to you with a  
4 possible deal for a sale of multiple bikes?

5 A. That's why I mentioned that.

6 Q. And do you recall that it was to Lee Custom?

7 A. Now I know it was to Lee Custom.

8 At this time I didn't know who Lee  
9 Custom was. I didn't know a Lee Custom. I  
10 was fairly new at the time.

11 Q. Do you remember Jason coming to you with a  
12 bill of sale or bills of sale made out to  
13 Lee Custom?

14 A. No.

15 Q. Do you remember him coming to you with a  
16 possible multiple bike deal to purchasers in  
17 New Hampshire?

18 A. Yes, I think New Hampshire. I don't know  
19 where they were at the time.

20 Q. All right. Do you recall Jason saying  
21 anything to you about Lee Custom in  
22 connection with that deal?

23 A. Again, I didn't know of that name until  
24 after this litigation started.

1 Q. You don't have any recollection of him  
2 saying anything about Lee Custom to you?

3 A. If he did, I didn't know who they were.  
4 I do have recollection that Jason Marsca --  
5 we had a sales contest and he tried to sneak  
6 buy a deposit for a whole bunch of  
7 motorcycles, which we squashed and we said,  
8 "You can't do that." I don't care if we're  
9 selling the bikes that were on sale, it's  
10 one motorcycle sold to one person," because  
11 I think he tried to try to pass a check for  
12 several bikes.

13 I think this is what it was. He  
14 tried to turn in a check that was a deposit  
15 for several motorcycles and it was turned  
16 back to him.

17 Q. You recall there was eight?

18 A. I didn't think it was that many, but it  
19 was --

20 Q. Do you recall it was in connection with a  
21 buyer or buyers in New Hampshire?

22 A. No. I recall that he tried to win a sales  
23 contest where I was offering, I think,  
24 \$1,000 that day to anybody who told ten

1 Slim's buyers?

2 MR. REHNQUIST: I object to the  
3 form.

4 Q. Was that what you were telling him?

5 A. No. My instructions were, "Call this fella  
6 up and handle him." That's what I told him.  
7 'Cuz you said on the first call.

8 Q. Well, was your -- were you intending to  
9 indicate to Sean that he should deal with  
10 this gentleman, Slim's buyers?

11 A. I don't even think I mentioned that.

12 Q. Okay.

13 A. I told Sean to call this fellow and he's got  
14 20 people that wants to buy bikes or 25 -- I  
15 forget the number -- but call him right away  
16 and get something going.

17 Q. Well, my question is whether was it okay  
18 with you for Sean to deal with Slim so long  
19 as he got individual names for the bikes  
20 that were being sold?

21 A. Absolutely, as long as a person bought the  
22 bike, an individual.

23 If you, Mr. Berkowitz, bought a  
24 bike and Mr. Berkowitz was paying for that



1           happened on that deal, the Florida deal?

2                   MR. REHNQUIST: I object to the  
3           form.

4       A.     I don't recollect a whole lot other than  
5           negotiating prices. Sean was negotiating  
6           prices with these people.

7       Q.     Let me ask you this: Did you ever have  
8           another conversation with Slim?

9       A.     I don't think so.

10      Q.     You don't recall negotiating price with  
11           Slim?

12      A.     I don't remember. I might have. I might  
13           have spoken with him again, but I don't  
14           remember. I hardly remember speaking to him  
15           the first time until all this happened.

16      Q.     Do you remember discussing with Slim the  
17           need to have individual names associated  
18           with the individual bikes that were being  
19           sold?

20      A.     I might have. I don't recollect.

21      Q.     Do you recall having any discussion with --  
22           well, strike that.

23                   Do you recall learning at any time  
24           in July of '03 that Slim worked for a

1 company called DC Imports?

2 A. No.

3 Q. You don't recall ever learning that in  
4 July of '03?

5 A. I don't recollect.

6 Q. Do you recall talking with a woman named  
7 Debbie Lunsford in July of '03?

8 A. I might have. I don't remember, and, again,  
9 once this litigation started, I don't  
10 remember, but I might have.

11 Q. Do you recall the content of any  
12 conversation that you had with Debbie  
13 Lunsford sitting here today?

14 A. *(Witness nods.)*

15 Q. You're shaking your head, but we have to  
16 get --

17 A. No.

18 Q. Do you recall the content of any discussion  
19 that you had with Slim other than what  
20 you've testified to?

21 A. Again, I could have, but I don't recollect  
22 today.

23 Q. Do you recall having any discussion with  
24 Debbie about the need for separate checks

# EXHIBIT 9

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## UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS

CYCLE-CRAFT CO., INC. ) CIVIL ACTION

D/B/A BOSTON HARLEY-DAVIDSON/BUELL, ) NO. 11402NMG

PLAINTIFF, )

v. )

HARLEY-DAVIDSON MOTOR COMPANY, INC., )

AND BUELL DISTRIBUTION COMPANY, LLC, )

DEFENDANTS. )

## DEPOSITION OF SEAN WALSH

DATE: APRIL 27, 2005

TIME: 10:11 A.M.

PLACE: BINGHAM MCCUTCHEN

150 FEDERAL STREET

BOSTON, MA 02110

## MEDEIROS STENO &amp; VIDEO GROUP



"FOR THE TRAVELING LITIGATOR SINCE 1988"

\*Boston: 617.590.9767

\*Depositions

\*New York: 646.413.4499

\*Arbitrations

\*Florida 305.321.7414

\*E-transcript

\*E-mail: depo@gomedeiros.com

\*V ideo

\*MA \*CT \*NJ \*NY \*FL

1 there's a section about non-retail sales.

2 Q: What was your understanding in 2003 as to  
3 Harley-Davidson's policy with respect to non-retail  
4 sales?

5 A: My understanding was that motorcycles could  
6 not be sold to businesses, to resalers. They had to  
7 be sold to personal individuals.

8 Q: By "personal individuals" what do you mean?

9 A: Just people, regular customers, not in  
10 business names and not company names.

11 Q: You say you first became aware of this  
12 policy when?

13 A: When I first started selling motorcycles in  
14 2002 it had come up just in discussion about selling  
15 motorcycles. A customer wanted to buy a bike and put  
16 it in his company name and I was told that he had to  
17 put it in his personal name by the finance manager at  
18 the time and by the sales manager.

19 Q: Who was the finance manager at that time?

20 A: Rhonda Young.

21 Q: And the sales manager was Mr. Capucci?

22 A: Yes.

23 Q: At some point did you become involved with  
24 the sale of motorcycles to a Florida company called

1 A: It was somebody at DC Imports. They told  
2 me that the name DC Imports was on the credit card in  
3 addition to their personal name. I'm not, I don't  
4 remember whose specific name it was. Obviously this  
5 was declined.

6 Q: Do you recall at some point, though, a  
7 \$10,000 deposit was accepted via a charge card?

8 A: Yes. The second credit card that they gave  
9 us went through.

10 Q: Do you recall whose name was on that second  
11 credit card?

12 A: I don't. It was a woman who worked at DC  
13 Imports. I'm not sure of the name.

14 Q: During the process of your dealings with  
15 Mr. Stevens and Ms. Lunsford at DC Imports, did you  
16 have any discussion with Mr. Buchbaum as to how the  
17 paperwork on this deal should be handled?

18 A: Yes.

19 Q: Can you describe that discussion for us?

20 A: Yes. Ron was very specific that the bills  
21 of sale all had to be written up in individual names.  
22 He wouldn't sell anything to DC Imports as a name  
23 and he asked me to convey that to Mike Stevens and  
24 let them know.

101

1 would put Mike Stevens on hold, go up to Ron's office  
2 and Ron would pick up the phone and talk to Mike  
3 because I wasn't able to negotiate price which is  
4 why.

5 Q: Is it your understanding that the  
6 conversations as far as you arranged for them or  
7 participated in them, the conversations between  
8 Buchbaum and Stevens had to do with the price?

9 A: Yes. They talked about the price of the  
10 motorcycles.

11 Q: I think you testified that you never had  
12 any conversations with Mike Stevens or anyone at DCI  
13 about DCI's business and what they did?

14 A: No, I never talked to them directly about  
15 what their company did. I mean I just assumed from  
16 the name DC Imports, I would assume that they  
17 imported goods. I didn't know what they did.

18 Q: Did you even know if they were in the  
19 motorcycle business?

20 A: No, we never talked about it. I did talk  
21 with Mike about his past. I know he had a history  
22 with motorcycles because he's from the Boston area.  
23 So I just talked to him about that but that was it.

24 Q: Nothing about DCI and what it did?

1 A: No.

2 Q: So did you have any conversations with  
3 anyone at DCI about who the individual purchasers of  
4 the motorcycles were?

5 MR. BERKOWITZ: Objection.

6 A: No, I didn't talk to them about the people.  
7 I just had the names. I didn't talk to them about  
8 who they were.

9 Q: Did you have any conversations with anyone  
10 at DCI about what the individual purchasers were  
11 going to do with the motorcycles once they received  
12 them?

13 MR. BERKOWITZ: Objection.

14 A: No.

15 Q: Do you remember around the time when you  
16 were talking to Mike Stevens that Mr. Buchbaum told  
17 you in manager's meetings that any sales had to be to  
18 individuals?

19 MR. BERKOWITZ: Objection.

20 A: Not in the manager's meetings. He would  
21 tell me individually. He would call me up to his  
22 office and he did say that all the bikes have to be  
23 in individual's names.

24 Q: You don't recall him telling in the



1 Maciano. Number 9 Dennis Seca. Number 10 Robin  
2 Maciano. Number 12 John Seca. Number 13 Howie Cook.  
3 Number 14 Sal Giordano. Number 15 Rod Gernese.  
4 Number 18 Lisa Bloom. I'm not familiar with name  
5 "Elaine Bloom" but I would assume that's one of the  
6 Bloom family. Number 19 Jamie McGrath. Obviously  
7 number 20, myself. That's it. The three that are  
8 listed to Boston Harley-Davidson were motorcycles  
9 that the owner of Boston Harley-Davidson was taking  
10 as his own. So I was told to SWR them in Boston  
11 Harley-Davidson's name and the company would be  
12 paying for the bikes and the company would be keeping  
13 the bikes in Boston Harley-Davidson's name so that  
14 the owner could use them.

15 Q: Who told you that?

16 A: Ron Buchbaum told me to do that.

17 Q: What did you do, if anything?

18 A: I instructed Rochelle Poletti who is the  
19 payroll administrator who does all the books upstairs  
20 also to pay for the motorcycles. And then I SWR'd  
21 them in Boston Harley-Davidson's name.

22 Q: Was it at the same meeting that you  
23 testified about earlier that Mr. Buchbaum said that  
24 those motorcycles would be bought by the dealership

1 A: No. No, she didn't mention that to me.

2 Q: Was there any discussion about that  
3 subject?

4 A: No. No.

5 MR. REHNQUIST: Nothing further. Hang on  
6 one second, I'm told that I should ask more  
7 questions. One question on a different subject.

8 Q: Mr. Walsh, I think you said you purchased a  
9 bike from Boston Harley-Davidson --

10 A: I did.

11 Q: -- in I think March or so of '03?

12 A: February or March. I believe I started the  
13 procedure in February.

14 Q: On any other occasion have you purchased a  
15 motorcycle from Boston Harley-Davidson?

16 A: Yes. I believe this is my third.

17 Q: Did John Atwood have a policy that you were  
18 aware of of permitting employees who had been working  
19 there for sometime to buy a motorcycle from the  
20 company at a low price?

21 A: Yes. When I originally started there I was  
22 told it was a year and then you would get a deal on a  
23 bike.

24 Q: And you took advantage of that I think

1     **three times?**

2             A: Yeah, that was my third motorcycle I  
3     bought.

4             Q: Do you recall the prices, maybe not the  
5     actual number but the relationship between the price  
6     that the employee could buy the motorcycle and the  
7     MSRP?

8             A: The general deal was \$500.00 over cost for  
9     an employee but John Atwood would administer the  
10    final price, but as a rule it was \$500.00 over cost.

11            Q: Do you know if other employees took  
12    advantage of that opportunity as well?

13            A: Yes. Several employees.

14            Q: Was this complaints considered by the  
15    employees almost sort of like a fringe benefit of  
16    working there?

17            A: Yeah, I would say so. It was definitely a  
18    benefit.

19            Q: Have you ever bought a motorcycle in the  
20    open market for anywhere close to \$500.00 over MRSP?

21                   MR. BERKOWITZ: Objection.

22            A: I never bought a new motorcycle until I  
23    worked at Boston Harley-Davidson. I had bought two  
24    pre-owned Harleys before then from individuals, not

# EXHIBIT 10

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## UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS

CYCLE-CRAFT CO., INC. ) CIVIL ACTION  
 D/B/A BOSTON HARLEY-DAVIDSON/BUELL, ) NO. 11402NMG  
 PLAINTIFF, )  
 v. )  
 HARLEY-DAVIDSON MOTOR COMPANY, INC., )  
 AND BUELL DISTRIBUTION COMPANY, LLC, )  
 DEFENDANTS. )

## DEPOSITION OF JASON MARASCA

DATE: APRIL 28, 2005

TIME: 10:06 A.M.

PLACE: BINGHAM MCCUTCHEN

150 FEDERAL STREET

BOSTON, MA 02110

MEDEIROS STENO &amp; VIDEO GROUP



"FOR THE TRAVELING LITIGATOR SINCE 1988"

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\*Video

\*MA \*CT \*NJ \*NY \*FL

1 of Harley-Davidson's sometimes referred to as a  
2 non-retail sales policy?

3 A: No.

4 Q: When did you first become aware of that  
5 policy?

6 A: A couple months ago.

7 Q: How did you become aware of it?

8 A: At my new employer.

9 Q: At Kelly's?

10 A: Correct.

11 Q: When you were at Cycle-Craft were you aware  
12 of such a policy?

13 A: No, I wasn't.

14 Q: Can you describe for me what your  
15 understanding of the policy is?

16 A: Now?

17 MR. BERKOWITZ: Yes.

18 THE WITNESS: You cannot wholesale bikes  
19 to another dealer for them to sell the bike. I  
20 believe that's the way it works.

21 Q: What do you mean when you say "wholesale"?

22 A: Discount.

23 Q: Do you know whether the policy prohibits  
24 sales to other people who are going to resell the

1 A: I believe they had said Lee Custom Cycles.

2 Q: Are you positive?

3 A: I'm pretty sure, yes.

4 Q: Isn't it true that when you walked in there  
5 and told Mr. Buchbaum about this transaction that he  
6 told you that those motorcycles have to be sold to  
7 individuals?

8 MR. BERKOWITZ: Objection. Leading.

9 A: He said that they had to be under different  
10 names, individual different names, yes.

11 Q: I gather you thought at the time that he  
12 was doing this more or less just to bust your chops  
13 to use a colloquial term?

14 A: Pretty much, yeah.

15 Q: Do you now know that in fact he was doing  
16 that because Harley-Davidson does not permit  
17 motorcycles to be sold to businesses?

18 MR. BERKOWITZ: Objection. Leading.

19 A: Yeah, I know that now.

20 Q: Did you have any discussion with, well I  
21 gather you and Sean Walsh are friendly?

22 A: Yes.

23 Q: Did you have any discussion with Sean Walsh  
24 around that time when Mr. Buchbaum gave you this

1 direction about why he was causing you to do it the  
2 hard way?

3 A: I honestly can't recall.

4 Q: Do you recall if he told you that you had  
5 to do the deposits on separate credit cards?

6 A: Who, Ron Buchbaum?

7 MR. REHNQUIST: Yes.

8 THE WITNESS: Yes.

9 Q: Do you recall that he told you that those  
10 motorcycles had to be picked up at the dealership by  
11 the individuals whose names were on them?

12 A: No, he told me that each individual had to  
13 come in and sign the paperwork. Nothing about  
14 picking up the bike.

15 Q: But he did say that each individual had to  
16 come to the dealership?

17 A: Yes.

18 Q: Have you had any dealings with Mr.  
19 Christensen since you've been working at Kelly's  
20 Harley-Davidson?

21 A: No, I have not.

22 Q: Have you had any conversations with anyone  
23 at Kelly's about Christensen or about Lee Custom  
24 Cycle?



1 A: No.

2 Q: How is it in the last few months that you  
3 came to learn of this policy that Harley-Davidson has  
4 against not selling motorcycles to businesses?

5 MR. BERKOWITZ: Objection. Go ahead.

6 A: I read the contract and talked to my GM  
7 about it. I believe actually I learned about this  
8 when I got the subpoena I talked to my GM about it  
9 and he told me, "Yeah, that's the way it is." And he  
10 showed me a copy of the contract.

11 Q: When you say "the contract", that he showed  
12 you a copy of the contract can you describe the  
13 document that he showed you?

14 A: He showed me a page in a book that  
15 described not selling bikes to wholesalers or  
16 something like that. He went over that really quick  
17 and I said okay.

18 Q: Do you recall if it was a small paragraph  
19 in a large contract?

20 A: I believe it was, yeah, it was about a page  
21 I thought.

22 Q: Had you ever seen that before?

23 A: No, I hadn't.

24 Q: I gather that now you report to the General

1 **Harley-Davidson ride motorcycles?**

2 A: A good percentage of them.

3 Q: In fact, a lot of them bought motorcycles  
4 from Boston Harley-Davidson, didn't they?

5 MR. BERKOWITZ: Objection. Leading. You  
6 can answer.

7 A: Yeah, sure.

8 Q: Do you recall that John Atwood would  
9 sometimes allow employees who had been with Boston  
10 Harley-Davidson for a certain period of time to buy a  
11 motorcycle at a good price?

12 A: Yes.

13 Q: Did you take advantage of that opportunity  
14 yourself?

15 A: Yes, I did.

16 Q: What were the terms of your purchase? Let  
17 me ask you this, how many bikes did you buy from the  
18 dealership?

19 A: I purchased two new motorcycles from the  
20 dealership.

21 Q: At what price?

22 A: I don't remember the exact prices.

23 Q: Do you recall that it was a good price?

24 A: Yeah, I got a pretty good deal.

1 Q: Do you recall that this was perceived by  
2 some of the employees as almost being like a fringe  
3 benefit of working there?

4 MR. BERKOWITZ: Objection.

5 A: Yeah, I guess.

6 Q: I believe you testified earlier that you  
7 did not have any discussion with Mr. Christensen  
8 about what was going to happen to the motorcycles  
9 after they left the Boston Harley-Davidson  
10 dealership?

11 A: Correct.

12 Q: I believe you said that you simply assumed  
13 because he was in the motorcycle business that he was  
14 planning to get the motorcycles and resell them?

15 A: Correct.

16 Q: But you never had any conversation with him  
17 about that?

18 A: Not that I can recall.

19 Q: And you don't know from any conversations  
20 with him what, if anything, the individuals whose  
21 names were on the files at Boston Harley-Davidson  
22 were going to do with those motorcycles, do you?

23 MR. BERKOWITZ: Objection.

24 A: Do I know for sure?

1 Q: Do you know based on any conversations you  
2 had with Mr. Christensen about what the individuals  
3 who came down and filled out the paperwork were going  
4 to do with those motorcycles?

5 A: No.

6 MR. BERKOWITZ: Objection.

7 Q: You don't know whether they rode  
8 motorcycles or whether they didn't?

9 MR. BERKOWITZ: Objection.

10 A: I do not know that.

11 Q: You don't know whether Mr. Christensen was  
12 acting as a broker for these sales and perhaps they  
13 were paying him the commission and were going to keep  
14 the motorcycles themselves, do you?

15 MR. BERKOWITZ: Objection.

16 A: I do not believe so.

17 Q: Do you know? Did you have any conversation  
18 with Mr. Christensen about what was going to happen  
19 to the motorcycles after they left the dealership in  
20 Boston Harley-Davidson?

21 A: Not that I can recall.

22 Q: You testified that you believed the  
23 motorcycles were paid for by check?

24 A: Yes.